1957.

Examined:

File No. Misc Suits (Bijapur)/51

Legal DEPARTMENT

AE BRANCH

Subject:— Miscellaneous matters relating to suits from Bijapur District.

P.7 (E)

Misc Suits (Bijapur)/51

File No.

Std. Sectt. Slip 24-B

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Legal Department File No. Misc. Suits Bij./87.

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Miscellaneous matters relating to suits from Bijapur District.

Misc Application No. 87 /1941

1-8.

Below Exhibit No.1 in Misc. Application No.87 of 1941.

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This is an application for fixing the standard rent of the suit business premises under section 11 of the Bombay Rents, Hotel and Lodging House Rates Control Act No.57 of 1947, and on issue of notice the opponent by Exh. 9 contends that the applicant has been his tenant ever since 1-1-1948 on an agreed rental of Rs.66-8-0, that the applicant's allegation that the agreed rental was subject to the certificate of the Executive Engineer is false, that the standard rent for suit premises is Rs.66-8-0, that in as much as the renatal was agreed by the parties the question of fixing a standard rental does not arise in view of section 5 olause 10 Sub-clause B III of the Bombay Act No.57 of 1947, that the agreed rental is a reasonable rental would be clear having regard to the rental of the buildings of the suit locality and that, therefore, the application should be dismissed with costs.

2. On the date of hearing it is not disputed that the standard rent for the suit premises could be assessed by the Court inspite of the agreed rental, and to the same effect is the provision of section 11 of the said Act. Therefore, the following points arise for consideration in this case:-

1. What standard rent should be allowed for the suit premises ?
2. What order ?

3. This Court's findings on points No. 1 as agreed.
No.2 see order below.

Reasons.

4. The present application arises under the following facts. The suit business premisess is comprised of two rooms measuring 17 feet 3 inches by 20 feet, and 17 feet 6 inches by 17 feet, and admittedly these rooms are situate at a

short distance from the cloth market areaof Bijapur town. It is for the first time that these two rooms were let out to the applicant on 1-1-1948 for being used as a business premises. It appears that the applicant orally agreed to a to pay a monthly rent of Rs.70/- and took over possession of these premises on 1-1-1948 by reserving a period of three months. Subsequently, it appears that parties thought fit to have the terms reduced into writing, and Exh.22 dated 6-7-1948 was executed by the opponent in favour of the applicant by detailing the term of the lease.Thus Exh.22 clearly lays down that the applicant had agreed to pay a rental of Rs.70/- per month, and this document does not disclose that the opponent had ever agreed to receive the said rental subject to the approval of the Executive Engineer as alleged by the applicant, and on this point the applicant has no evidence. Thus it has to be inferred that the applicant had unconditionally agreed to pay a rental of Rs.70/- from 1st of January 1948 till 31st of March 1948. After some time it appears that the applicant issued a notice under section 21 of the said Act to furnish particulars of the amount of standard rent of the suit premises and in reply the opponent stated that Rs. 66-8-0 would be the standard rent of the suit premises. On this admission the agreed rent of Rs.70/- now stands reduced to Rs.66-8-0 and, therefore, it has to be seen whether this rental so reduced is in any way excessive or otherwise and if the same is found to be in excessive what standard rent should be fixed for the premises.In this connection it would be desirable to have a clear idea of the term " standard rent" as defined in the said Act. Section 5 of the said Act defines that standard rent means that rental which is fixed by the court and in the absence of any decision by the Court the rent at which the premises were let on the 1st day of September 1940 or where they were not let on the 1st day of September 1940, the rental at which they were the last let before that date or where they were first let after the first day of September1940, the rent at which they were first let or the rental fixed by the Court under section 11 of

the said Act.This definition of the standard rent discloses that the Legislature has given very importance to the rental prevailing prior to September 1940 and on that basis it has to be seen whether the rental of Rs.66-8-0 is quite an excessive rental.I, therefore, proceed to consider the evidence on record.

5. The evidence of the applicant comprises of the statement on oath of the P.W.D.Overseer Shri Samuel Exh.19 at whose instance the Executive Engineer had once proposed to the applicant that the reasonable rental of the suit premises is Rs.40/-.This witness states that the carpet area of the suit shop is about 651 sqr.feet and on the basis of his inferences drawn from the rental of other buildings, the reasonable rental of the suit shop is Rs.40/-.He states that the rental of Bijapur buildings varies from Rs.3/- to Rs.6-0-0 per one hundred Sqr.feet and it appears the he has allowed the rate of Rs.6/- in the case of the present suit premises.It has been elicited in the course of his cross-examination that the basis of his statistics is wrong in as much as he has not taken into account the rental statistics of any shop buildings either of Bijapur town or of the suit locality.In his cross-examination he admits that had fixed the rate of Rs.3/- to 6/- per hundred Sqr. feet in the course of assessing the reasonable rental at the instance of the parties or at the instance of the Government.He clearly admits that this rate was based on statistics of the rental of premises other than shop premises and as such it is clear that the rate arrived at by him and applied in the pr sent case was not based on the rental of business premises.It cannot be disputed and it is not disputed befoe me that the business premises fetch a high rate of rental than residential premises and that being so it cannot be disputed that the rate applied by him in assessing the rental of the suit premises was clearly not the respresentative rate for business premises. Had he proceed -ed to fix a rate for shop premises by taking into account the rental of shops as prevailing prior to 1940 and then proceeded to assess the fare rental of the suit shops, certainly it cannot

be disputed that he would have assessed a high rental than Rs.40/- as he has done in the present case.Therefore, it is clear that Shri Samuel's evidence does not help the applicant.I, therefore, proceed to consider the evidence laid by the opponent.The opponent's son Jayawant Exh.20 has been examined on behalf of the opponent and the opponent has also examined one Vasudeo Ex .21 who is an attestor of Ex.22. Jayavant Exh. 20 stated that a neighbouring shop of one Ankalikar consisting of only one room and of lesser area than that of the suit shop by nearly a half has been leased out on a rental of Rs.50/- per month and his statement is not challenged in his cross-examination.He also states that a shop situate to the left of the suit shop shoes has been leased out on a rental of Rs.66/- per month to theBata Comapany and this shop measures 10 X 16 feet.This statement of his too.is not challenged in the course of his cross-examination It is admitted by Jayavant that the said Ankalikar's shop has been leased out since 1945 when it was newly constructed and that the Bata shop was opened in 1949 or in 1950. The rental reserved by these two shops, if am not mistaken clearly indicates that the rental of Rs.66-8-0 now agreed between the parties cannot be said to be the least excessive.True that the standard rent neither for the said Ankalikar's shop nor the said Bata's shop had been fixed by the Court, but in the absence of any such fixation by the Court section 5 of the said BombayAct No.57 of 1947 clearly indicates that the rental paid by these shops can be regarded as the standard rental.The applicant has not cared to show the pre 1940 rental of any other shops and as such there is no material on record to enable this court to come to a conclusion that the rental reserved in the present case is excessive.The opponent's witnessxx Vasudeo Exh.21 states that a rental of Rs.70/- was fixed for the suit premises having regard to the rental of the neighbouring shops, and in-as much as the suit shops have been leased out as business premises for the first time on 1-1-1948, with the evidence on record I have not been able to come to the conclusion that the standard rent for the suit shops

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as contemplated by section 11 of the said Act can be anything less than Rs.66-8-0,.Hence, the applicant fails on merits. However, inasmuch he has pursued this application on the basis of the reasonable rental as intimated to him by the Executive Engineer, I would like to ask the parties to bear their own co ts.Hence I record the above findings and pass the following order:-

Order.

It is declared that the standard rental of the suit shop premises is Rs.66-8-0.Parties to bear costs.

Dated the 18th June 1951.

Sd.
II Jt.Civil Judge.

" True Copy"

K Mees

Dist.Govt.Pleader,Bijapur.
18-6-1951.

Legal Department

Submitted.

. Please see the D.G.P. Bijapur's letter at p. 1 ante. He has stated that the decision in Misc. Appln No. 87 of 1949 is reasonable and he does not think that an appeal should be filed in this matter. For orders.

NB
23/6

Asstt. Solr (MJ) There does not appear to be any Report from the Joint Registrar of Industrial Cooperatives & Village Industries at whose instance the application for fixation of Std. rent was filed. The said report may be called for immediately as required by Rule 132 of the L.C. Rules.

Sol (Genl.) 25-6.